

405 KAR 30:040. Amount and duration of performance bonds.

RELATES TO: KRS 350.060

STATUTORY AUTHORITY: KRS 151.125, 224. 033, 350.028, 350.050, 350.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.600 requires the Environmental and Public Protection Cabinet to develop administrative regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth specified criteria upon which to base determination of bond amounts and requires certain periods of liability during which bonds must remain in effect.

Section 1. Determination of Bond Amounts. The standard applied by the cabinet in determining the amount of performance bond shall be the estimated cost to the cabinet if it had to perform the reclamation, restoration and abatement work required of a person who conducts oil shale operations under KRS Chapter 350, all other applicable statutes, and the administrative regulations promulgated pursuant thereto, as well as such additional work as would be required to achieve compliance with the standards for revegetation under these oil shale administrative regulations. The amount of bond shall be further based on, but not be limited to, such other cost information as may be required by or available to the cabinet. In calculating the initial amount of the performance bond, the cabinet shall take into consideration the three (3) phases of reclamation and the percentages to be released upon completion of each phase. The three (3) phases of reclamation and the percentages to be released upon completion of each phase are set forth in 405 KAR 30:070 entitled Procedures, Criteria and Schedule for Release of Performance Bonds.

Section 2. Minimum Amount. For oil shale operation permits the minimum amount of bond shall be \$20,000.

Section 3. Period of Liability. (1) Liability under performance bonds applicable to a permit shall continue until completion of all reclamation work required of persons who conduct oil shale operations under the requirements of these oil shale administrative regulations and the conditions of the permit have been completed.

(2) In addition to the period necessary to achieve compliance with the requirements of all applicable statutes and administrative regulations and the conditions of the permit, the period of liability under performance bonds shall continue for a period of seven (7) years beginning with the last year of substantially augmented seeding, fertilizing, irrigation or other work. The period of liability shall begin again whenever substantially augmented seeding, fertilizing, irrigation or other work is required or conducted on the site prior to bond release. A portion of a bonded area requiring extended liability because of substantial augmentation may be separated from the original area and bonded separately upon approval by the cabinet; provided, however, that such separation comes only following a good faith attempt to reclaim the entire permit area. The original bond amount shall apply to the area which has not required substantial augmentation. A new bond, in an amount determined by the cabinet, shall be posted for the area which has been substantially augmented. Before determining that extended liability should apply to only a portion of the original bonded area, the cabinet shall determine that such area portion:

- (a) Is not significant in extent in relation to the entire area under bond; and
- (b) Is limited to a distinguishable contiguous portion of the bonded area.

(3) If the cabinet approves a long-term intensive agricultural postmining land use, pursuant to these oil shale administrative regulations, the seven (7) year period of liability shall commence at the date of initial planting for such long-term intensive agricultural land use. Such approval shall not constitute a grant of an exception to the bond-liability periods of this section.

(4) If an area is separated under subsection (2) of this section, that portion shall be bonded separately and the period of liability shall commence anew. The period of liability for the remaining area shall continue in effect without extension. The amount of bond on the original bonded area may be adjusted in accordance with Section 4 of this administrative regulation.

Section 4. Adjustment of Amount. (1) The amount of the bond shall be reviewed and may be adjusted at any time during the life of a permit. The amount of the performance bond liability applicable to a permit shall be adjusted by the cabinet as the acreage in the permit area is increased or when the cabinet determines that the cost of future reclamation, restoration or abatement work has changed substantially. It shall be the obligation of the permittee to secure any additional bond that the cabinet determines is necessary. An increase in bond liability shall not affect the previously existing obligations of sureties.

(2) A permittee may request reduction of the required performance bond amount at any time if the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the cabinet to complete the reclamation responsibilities; provided, however, that under no circumstances will the bond amount be reduced where such a reduction will decrease the bond amount to a level less than that necessary for full reclamation. (8 Ky.R. 93; 467; eff. 3-1-1982; TAm eff. 8-9-2007; Crt eff. 7-3-2018.)